

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>MDC ACQUISITION CO., et al.,</b>	)	<b>CASE NO.</b>
	)	
<b>Plaintiffs,</b>	)	<b>JUDGE</b>
	)	
<b>vs.</b>	)	
	)	
<b>THE NORTH RIVER INSURANCE COMPANY, et al.,</b>	)	
	)	<b>DEFENDANT TRAVELERS PROPERTY</b>
<b>Defendants.</b>	)	<b>CASUALTY COMPANY OF</b>
	)	<b>AMERICA'S NOTICE OF</b>
	)	<b><u>REMOVAL</u></b>

Defendant Travelers Property Casualty Company of America ("Travelers"), for the purpose of removing this cause, pursuant to 28 U.S.C. §1332 and §1441 *et seq.*, to the United States District Court for the Northern District of Ohio, states the following:

**1. State Court Action**

On or about November 12, 2010, Plaintiffs MDC Acquisition Co., n/k/a WBC Group, LLC ("MDC"), and RGH Enterprises, Inc. ("RGH") filed this action against Travelers and Defendant The North River Insurance Company ("North River") in the Court of Common Pleas of Summit County, Ohio and assigned Case No. 2010 11 7606 ("State Court Action") on the docket of said court. MDC and RGH shall collectively be referred to as "Plaintiffs." Travelers and North River shall collectively be referred to as "Defendants." Travelers was first served with the Complaint on November 19, 2010. According to the court's docket, North River was served on November 18, 2010.



This Notice of Removal is filed within thirty (30) days of November 18, 2010, the date of first service on either of the Defendants. Accordingly, removal of this action is timely under 28 U.S.C. §1446(b).

## **2. Federal Jurisdiction**

This action is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332, because complete diversity exists between MDC and RGH, as Plaintiffs, and Travelers and North River, as Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, this action is removable pursuant to 28 U.S.C. § 1441.

### **a. Complete Diversity of Citizenship**

At the time of commencement of the State Court Action and at the time of removal, MDC is an Ohio limited liability company duly organized and existing pursuant to the laws of the state of Ohio, and maintains its principal place of business in Ohio. Upon information and belief, the members of MDC are residents of Ohio. Also at the time of commencement of the State Court Action and at the time of removal, RGH is a corporation duly organized and existing pursuant to the laws of the state of Ohio, and maintains its principal places of business in Ohio.

At the time of commencement of the State Court Action and at the time of removal, Travelers is a corporation duly organized and existing pursuant to the laws of the state of Connecticut, and maintains its principal place of business in Hartford, Connecticut. At the time of commencement of the State Court Action and at the time of removal, North River is a corporation duly organized and existing pursuant to the laws of the state of New Jersey, and maintains its principal place of business in Morristown, New Jersey. None of the Defendants in this action is now, nor at the time Plaintiffs filed their Complaint, a citizen of the state of Ohio



within the meaning of the Acts of Congress relating to the removal of cases. Therefore, complete diversity of citizenship exists between each Plaintiff and each Defendant.

**b. Amount in Controversy**

While Defendants deny any liability, Plaintiffs seek in the State Court Action a declaratory judgment that Defendants owe Plaintiffs a defense and indemnification in an underlying class action against Plaintiffs in the Los Angeles Superior Court, Case No. BC415244 (“Underlying Lawsuit”), for allegedly violating the Junk Fax Prevention Act. (*See* Complaint, ¶¶6, 20, 21, 24, and 25). In the Underlying Lawsuit, the class plaintiffs are pursuing statutory damages of not less than \$500, trebled for each violation of the Junk Fax Prevention Act, in an amount not less than \$3,000,000. (*See* Underlying Lawsuit Complaint, pg. 16, attached hereto as Exhibit A.) Because Plaintiffs in the State Court Action are seeking defense and indemnification for the Underlying Lawsuit, the State Court Action involves an amount in controversy in excess of \$75,000, exclusive of interest and costs. Accordingly, the diversity jurisdictional amount in controversy has been met.

**3. Venue**

Venue of this removal action is proper under 28 U.S.C. §1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the State Court Action was pending.

**4. Consent of Other Defendants**

North River has been properly served, and through its counsel has consented to and joined in this Removal. An executed copy of North River’s consent and joinder in removal is attached hereto as Exhibit B.



**5. Court Documents Attached**

A copy of Plaintiffs' Complaint in the State Court Action is attached hereto as Exhibit C. Copies of the summonses served upon Travelers and North River are attached hereto as Exhibit D. Attached as Exhibit E are copies of the notice of appearance and request for an extension of time filed by North River in the State Court Action.

**6. Relief Requested**

Travelers respectfully requests that this Court accept this Notice of Removal and that it assume jurisdiction of this litigation and issue such further orders and processes as may be necessary for the trial hereof.

**7. Other Removal Requirements**

Promptly after the filing of this Notice of Removal, Travelers shall provide notice of the removal to Plaintiffs through their attorneys of record in the State Court Action and to the Clerk of the Court in the State Court Action, as required by 28 U.S.C. § 1446(d). Travelers reserves all rights and defenses, and the filing of this Notice of Removal is subject to, and without waiver of, any defenses or rights.

Respectfully submitted,

/s/Brian E. Roof

Michael E. Smith (0042372)

Brian E. Roof (0071451)

FRANTZ WARD LLP

2500 Key Center

127 Public Square

Cleveland, Ohio 44114-1230

(216) 515-1660

(216) 515-1650 (fax)

*Attorneys for Defendant Travelers Property  
Casualty Company of America*



**CERTIFICATE OF SERVICE**

A copy of Defendant Travelers Property Casualty Company of America's foregoing Notice of Removal was served via regular U.S. mail, first class, postage prepaid, upon the following, this 17th day of December 2010:

Mark S. Fusco, Esq.  
Michael J. Jordan, Esq.  
Walter & Haverfield LLP  
1301 East Ninth Street, Suite 3500  
Cleveland, Ohio 44114  
**Plaintiffs' Counsel**

Joseph Wantz, Esq.  
Williams Moliterno & Scully Co., L.P.A  
221 Pinnacle Parkway  
Twinsburg, OH. 44087-2367  
**Counsel for Defendant The North River  
Insurance Company**

Michael Gregg, Esq.  
Danita L. Davis, Esq.  
Merlo Kanofsky & Gregg, Ltd.  
208 South LaSalle Street  
Suite 1750  
Chicago, IL 60604  
**Counsel for Defendant The North River  
Insurance Company**

/s/ Brian E. Roof  
*One of the Attorneys for Defendant  
Travelers Property Casualty Company of  
America*